

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DIANE JEFFREY as parent and next friend
of GLENDA SHEROUSE, a minor, and RAY
AVILA, as parent and next friend of SYLVIA
AVILA, a minor,

Plaintiffs,

vs.

Civ. No. 01-349 WWD/LCS ACE

SUSANNE RATCHNER, MACARIO PAGE,
YLAINE HETES, JOSEPH DURAN, and JT
STONE, in the individual capacities, and the
CITY OF ALBUQUERQUE,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendants' Motion for Summary Judgment based on qualified immunity [docket no. 17]. The motion is supported by fourteen exhibits which include a purported aerial photograph, six affidavits, portions of two incompletely identified and unauthenticated transcripts (Ex. F and J), and certain records which purport to be from the Albuquerque Police Department. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment questions the assertions of fact made by Defendants in the numbered Statement of Facts portion of their Memorandum in Support of Motion for Summary Judgment Based on Qualified Immunity. Specifically, Plaintiffs question the allegations made by Defendants in each of the 126 paragraphs of the Statement of Facts. No reply was filed by

Defendants. Numerous items in Defendants' Statement of Facts are based on affidavits which make statements of which affiants do not have personal knowledge. Some of the items in the Defendants' Statement of Facts are based on unauthenticated and uncertified documents. In short, Defendants fail to support their Motion for Summary Judgment by the type of proof required by Fed. R. Civ. P. 56(e). The Defendants' Motion for Summary Judgment should be DENIED.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE